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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of ROBIN and KURT
GEHLSSEN.

ROBIN GEHLSSEN,

Appellant,

v.

KURT GEHLSSEN,

Respondent.

D055077

(Super. Ct. No. DN121576)

APPEAL from orders of the Superior Court of San Diego County, Joseph P.

Brannigan, Judge. Affirmed.

Appellant Robin Gehlsen (Mother) appeals from postjudgment orders modifying spousal and child support, in the dissolution action between Mother and her former husband, respondent Kurt Gehlsen (Father). In 2006, the dissolution trial was held, and Father was ordered to pay child and spousal support (\$4,069 and \$3,000, respectively). On appeal, Mother contends the family court erred (1) in modifying that award of spousal

support to set it at zero as of July 2009, and (2) in keeping the child support award essentially the same. In both respects, Mother argues the court incorrectly imputed to her an excessive monthly income, in light of her showing she had made \$700 the past month, and also due to some impairment of her ability to earn, due to her showing of current health problems. (Fam. Code, § 4320; all further statutory references are to the Family Code unless noted.)

In addition, Mother contends the court misinterpreted the evidence and abused its discretion, when it left in place the timeshare for the children that was set by the 2005 judgment and 2006 support orders (i.e., 27 percent for Father, who had relocated to Arizona for employment purposes and was paying travel expenses for himself and the children). (§ 4053.) Mother did not provide any objective evidence about Father's timeshare, only allegations that it was not all being exercised.

On appeal, Mother does not challenge the underlying finding that she is able to work. She seeks to have the 2006 orders reinstated, or to have the matter remanded for rehearing.

In response, Father argues that the court acted within its discretion, because Mother's reported income of \$700 for the month prior to the February 2009 hearing showed, on its face, that she was not in compliance with the conditions imposed in the previous support orders issued in 2006. Specifically, those orders included findings that Mother was not precluded from working due to her health conditions, and based on a 2004 vocational evaluation, Mother was then significantly under employed but had the ability to become self-supporting within a reasonable amount of time, and was directed to

seek further employment. In those 2006 orders, the court advised Mother that her "failure to take meaningful steps towards becoming self-supporting may be used as a basis for reducing spousal support in the future." (See *In re Marriage of Shaughnessy* (2006) 139 Cal.App.4th 1225, 1238, 1246-1249 (*Shaughnessy*) [failure to make sufficient efforts to become self-supporting, after notice and over time, can constitute change of circumstances justifying modification of support].)

As the respondent, Father contends the 2009 orders terminating spousal support, while keeping the child support at approximately the same level, should be affirmed. In addition, he argues Mother did not produce any substantial evidence showing that the existing timeshare for child support purposes was incorrect.

We conclude the family court was justified by the evidence in concluding that Father had shown a sufficient change of circumstances, based on the 2006 orders and findings, to shift the burden to Mother to show why the amount of monthly income to be imputed to her was excessive, but Mother had failed to carry that burden. She did not attempt to show any lack of support for the existing 2006 orders that had imputed an even larger amount of income to her (\$50,000 per year, or \$4,166 per month), based on a 2004 vocational evaluation. Mother's medical evidence did not show inability to work or to support herself, and she does not challenge the finding that she is able to work. The trial court's imputation of \$3,000 monthly income to her was within the range of the amounts supported by the record, and did not represent an abuse of discretion, and the termination of spousal support was appropriate.

With respect to the 27 percent timeshare allocation to Father, the record contains substantial evidence of his monthly travel expenses for the children, from October 2007 to February 2009, to bring them to his Arizona home, as their schedules allow. Mother's challenge to that portion of the orders is also unsuccessful. We affirm.

BACKGROUND

A. Facts: 2005 Judgment and 2006 Order Regarding Modification of Support

In June 2001, Mother filed a petition to dissolve the then 11-year marriage of the parties, which produced three children. Temporary family support was ordered in 2003. A November 18, 2005 judgment of dissolution was entered, reserving support issues for trial.

Father is chief scientific officer and vice president of a biotechnology company. At the time of the hearing in 2006, his gross monthly income was \$19,333. Mother was employed as a playground attendant and made approximately \$100 per month. The record included a 2004 vocational evaluation noting that she has a real estate license and had previously worked as a dental assistant.

After the dissolution trial, the court (Judge Dahlquist) issued a set of postjudgment orders in July 2006, which set child support at \$4,069 per month (allocated in separate amounts as to each of the three children), pursuant to guidelines. (§§ 4053, 4058.) Father was found to be exercising a 27 percent timeshare of custody, with the rest for Mother.

In the 2006 order, the court found Mother was not precluded from working by any existing health conditions, and she had the ability to engage in gainful employment

without unduly interfering with the children's interests. Although she had consulted a chiropractor in 2004, she did not follow up with treatment and apparently was consulting him only in an attempt to influence the outcome of the case. Based on the vocational evaluation and evidence, the court determined in 2006 that Mother had the ability to earn \$50,000 per year (or approximately \$4,166/month).

In addition to the child support award, the 2006 court order required Father to pay Mother spousal support of \$3,000 per month. (§§ 4055, 4320.) The family court specifically advised Mother that her "failure to take meaningful steps towards becoming self-supporting may be used as a basis for reducing spousal support in the future."

From 2006 to 2007, Father rented a house in Encinitas where his aunt lived, and where he and the children also lived during his timeshare. His company required him to relocate to Tucson, Arizona in 2006. In October 2007, Father gave up his Encinitas rental home for financial reasons, but he rented a condo nearby for visitation during the summer months of 2008. In 2008, he remarried, and his current wife lives in Phoenix, Arizona with her daughter.

B. February 2009 Order to Show Regarding Modification; Ruling

In October 2008, Father filed his application to modify or terminate the previous award of spousal support, and to modify child support, claiming that his income had remained approximately the same, while his expenses had increased, including travel for himself and the children to and from Tucson, Arizona. At that time, the children were 17, 15, and 13 years of age. In the fall of 2008, he visited the children in San Diego for a weekend and planned to fly them to Arizona later in the fall for other weekends, as their

schedules allowed. From October 2007 through February 2009, he spent approximately \$1,340 per month in travel expenses for the children.

Father had recently bought a car for the oldest child and was paying approximately \$3,900 per month for other child rearing expenses. His total monthly expenses were approximately \$15,000 per month. His gross monthly income as of February 2009 was approximately \$20,250. In his declaration, Father stated that his assets then amounted to about \$32,000, and his debt amounted to approximately \$475,000.

Father asserted that Mother was not contributing her court-ordered share of school and health expenses, and would not assist with the children's travel, causing him additional monthly expenses for airport shuttles (over \$350/month). Father contended that Mother had failed to make "a reasonable effort to become self-supporting." He requested that the court impute to her \$3,000 per month income, based on her real estate experience, as reflected in the 2004 vocational evaluation. This would be a reduction from the \$50,000 per year imputation of income that the 2006 order had contained.

Mother responded in propria persona to Father's OSC regarding modification. In her income and expense declaration, Mother reported \$700 income for the month of January 2009. She did not give any average monthly income. Since March 2007, Mother had been employed as a real estate agent, but due to negative conditions in the residential real estate market, in January 2008, she also started working on clients' loan modification/mitigation requests, on a fee for service basis. At that time, she also began selling skin care products on commission.

Mother reported assets of \$3,500, as well as real property valued at \$750,000. Her expenses were approximately \$7,300 per month. She stated that the children spend 90 percent of their time with her, and 10 percent with Father. Mother concurred with Father that both parties had encountered changed circumstances since the 2006 orders were issued, and stated that she was now requesting "alimony for life" due to health problems. Since 2007, she has been under medical care for an autoimmune condition affecting the absorption of nutrients, celiac disease, and her food costs have risen dramatically (79 percent). She also has been diagnosed with insulin resistance and impaired glucose tolerance, and states she is at risk for type 2 diabetes. Those conditions are affected by stress.

At the hearing in February 2009, Mother was representing herself, and she attempted to argue factual issues, such as her inability to earn more money, the limited amount of time Father was spending with the children, and the diminished value of her house. The court informed her that she was held to the same standard as an attorney in making her court appearances, and she was required to set forth facts in her filed responses. The court then criticized the sparse showing made by Father's attorney about the changed circumstances in the parties' finances, and about how much time the children were spending with Father. When Father's attorney offered to maintain the same child support order if spousal support were terminated, the court told counsel he was not a game show host and no bargaining would be taking place.

When the court inquired whether Mother made \$700 per month (as she claimed for January 2009 only), she answered, "If that, Your Honor," and added that she made

\$3,000 in net commissions in 2008 (\$4,000 gross), since the market was "horrible."

Father's attorney pointed out that Mother had not made a complete showing in her income and expense declaration about her earnings and had not attached required schedules (profit and loss and Schedule "C" statements). The court then inquired whether Father was requesting \$36,000 per year as imputed income to her, and noted that this figure represented a reduction from the \$50,000 per year originally estimated in the 2006 order (as supported by the 2004 vocational evaluation). The court then ruled that Mother should now be imputed \$3,000 per month income, which yielded a child support award of \$4,032.

Turning to the spousal support issues, the court acknowledged that Mother seemed to be having some health problems, although two letters from her doctors that she submitted did not state that she was unable to work, and Mother was again deemed to be lacking in credibility in claiming disabling health problems. The court noted that the situation was very similar as in 2006, when Mother had not yet taken any meaningful steps toward becoming self-sufficient, and the court determined that she remained significantly under-employed at the present time (going from \$100 per month to \$700 per month in two or three years). The court inquired why Mother had not provided 2006-2007 tax returns to Father as requested, and she said she lost them. The court then reduced spousal support to zero, effective July 1, 2009.

Mother appealed these support orders. With her opening brief, she filed an appendix that includes the lodged July 18, 2006 support order.

C. Record; Request for Additional Evidence on Appeal; Ruling

With his respondent's brief, Father filed an appendix including the November 18, 2005 judgment. Mother seems to object in her reply brief that the court did not have the judgment before it when it made the support order, particularly as to timeshare, but this is unclear. In any case, both appendices provide appropriate record material for our review.

Recently, Father filed a motion in this court requesting that we take new evidence on appeal of Mother's 2008 tax return, prepared in 2009, arguing that it discloses far more income than she orally claimed during the February 2009 court hearing. In the moving and opposing papers, both parties discussed the related OSC proceedings recently filed by Mother, seeking to modify the same support orders. We denied the motion to take additional evidence. It is not appropriate to add to this record material that was not before the trial court. (Code Civ. Proc., § 909; see *Gurewitz v. Kinder* (1979) 96 Cal.App.3d 460, 467-468 ["our power to take additional evidence and make findings pursuant to . . . Code of Civil Procedure section 909, is limited to questions of law and usually exercised very rarely to affirm a judgment or reverse with directions"].)

DISCUSSION

Both spousal and child support awards are reviewed for abuse of discretion. (*In re Marriage of De Guigne* (2002) 97 Cal.App.4th 1353, 1366; *Shaughnessy, supra*, 139 Cal.App.4th at p. 1235.) In either case, the appellate court reviews the record to determine if the court's factual determinations are supported by substantial evidence: "Our review is limited to determining whether the court's factual determinations are supported by substantial evidence and whether the court acted reasonably in exercising its

discretion. [Citation.] We do not substitute our judgment for that of the trial court, but confine ourselves to determining whether any judge could have reasonably made the challenged order. [Citation.]" (*In re Marriage of De Guigne*, *supra*, at p. 1360; *Shaughnessy*, *supra*, at p. 1235.)

Under section 3654, in motion proceedings concerning support orders, the parties may, but are not required to request a statement of decision. None was requested here. In the absence of a statement of decision, "all intendments will favor the trial court's ruling and it will be presumed on appeal that the trial court found all facts necessary to support the judgment." (*In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 649.)

The primary issues on appeal concern the calculation of Mother's imputed income for purposes of setting both child and spousal support. Mother chiefly argues that the evidence does not support the family court's decision to terminate her spousal support as of July 2009, based on her imputed ability to become self-supporting at the same level. With respect to child support, she likewise argues the income imputed to her was too great. Mother does not dispute that she has some ability and opportunity to work, but she also claims increased need. (*In re Marriage of Destein* (2001) 91 Cal.App.4th 1385, 1392.)

Mother also contends the family court should not have kept in place Father's 27 percent timeshare, in light of her claim that instead, he was only seeing the children 10 percent of the time. To address these arguments, we set forth statutory standards and discuss the applicable burden of proof. We then evaluate the parties' respective evidentiary showings about the findings required in setting these two types of support.

I

STATUTORY STANDARDS REGARDING MODIFICATION OF SUPPORT

A. Exercise of Discretion

"Unlike child support, which courts generally calculate in accordance with the mathematical formula set forth in the mandatory guidelines [citation], in awarding spousal support, a trial court has broad discretion in weighing numerous statutory factors." (*Shaughnessy, supra*, 139 Cal.App.4th at p. 1243.) "In exercising its discretion the trial court must follow established legal principles and base its findings on substantial evidence. [Citation.]" (*Id.* at p. 1235.)

The family court cannot properly impute income to a supported spouse without presentation of competent evidence of that spouse's ability and opportunity to earn such attributed income. (*In re Marriage of Wittgrove* (2004) 120 Cal.App.4th 1317, 1329 (*Wittgrove*).) For example, it was not enough merely to put into evidence the fact that the parent requesting child support was a qualified doctor, where she had also showed she was not working at the time of the separation, and her spouse supplied no evidence about her immediate employment prospects. (*Ibid.*)

"In exercising discretion whether to modify a spousal support order, 'the court considers the same criteria set forth in section 4320 as it considered when making the initial order. . . . [Citations.]' " (*Shaughnessy, supra*, 139 Cal.App.4th at p. 1235.) For our purposes, the 2006 order issued after the dissolution trial provides a baseline, initial spousal support order. At the modification stage, the court properly paid particular attention to the following subdivisions of section 4320, for purposes of considering

Father's modification request: " '(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following: [¶] '(1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; . . . ; [¶] '(e) The obligations and assets, including the separate property, of each party; [¶] '(f) The duration of the marriage.' " (*Shaughnessy, supra*, 139 Cal.App.4th at p. 1236.)

This was an 11-year marriage, which is statutorily considered to be a marriage of long duration. (§ 4336.) However, the parties have been separated since 2001. In such a case, "the goal of achieving the marital standard of living may decrease in relative importance over time." (*Shaughnessy, supra*, 139 Cal.App.4th at p. 1247.) "Trial courts have broad discretion in determining the meaning of 'self-supporting' in any particular case. Although, in general, the meaning of the term 'self-supporting' is achieving the marital standard of living [citation], the concept of the marital standard of living is itself often quite broad." (*Ibid.*) Also, Mother raised particular issues about her health, a pertinent consideration under section 4320, subdivision (h).

In the 2006 support order, the family court expressly sought to implement the provisions of section 4320, subdivision (l), which seeks to pursue the goal "that the supported party shall be self-supporting within a reasonable period of time." Section 4320, subdivision (l), preserves the court's discretion "to order support for a greater or lesser length of time, based on any of the other factors listed in this section, Section 4336, and the circumstances of the parties." Also, section 4320, subdivision (n) allows the

court to consider "[a]ny other factors the court determines are just and equitable."

(*Shaughnessy, supra*, 139 Cal.App.4th at p. 1237.)

Pursuant to section 4320, subdivision (l), a "failure to diligently pursue retraining in order to attempt to become self-supporting" may constitute a change in circumstances that will justify modifying a spousal support order. (*Shaughnessy, supra*, 139 Cal.App.4th at p. 1240.)

In attacking these 2009 orders, Mother is inconsistently requesting that the 2006 orders be reinstated. However, that would mean that a higher level of monthly income should again be imputed to her, and the original 27 percent timeshare for Father would remain in place. That would also amount to a concession by Mother that the 2004 vocational evaluation remained valid, even though Mother is claiming that the real estate market has been "horrible" in the past few years, from the perspective of real estate agents.

In any case, we recognize that the main thrusts of Mother's appeal are (1) to prevent spousal support from being terminated, mainly because she claims increased need due to health concerns, and (2) to seek more child support, allegedly due to more time she spent with the children.

B. Alleged Abuses of Discretion

Before addressing the trial court's assessment of the evidence, in balancing her admitted ability to work versus her need, we first dispose of some preliminary procedural points. Mother first argues the family court considered nothing more than the mere passage of time since the 2006 orders. (*In re Marriage of Wilson* (1975) 51 Cal.App.3d

116, 119.) The record does not bear this out, since it is obvious in the reporter's transcript that the family court fully considered a number of factors in the declarations about the respective efforts of the parties, in the immediate past, to provide for their own and the needs of the children. When the court criticized Father's counsel's showing of the facts regarding the support and timeshare issues, it was properly attempting to hold the parties to the statutory standards and to require proof of their allegations.

We also disagree with Mother's claim of error, that the orders must fail because there was no express "step-down" order in this case, as contemplated by *In re Marriage of Richmond* (1980) 105 Cal.App.3d 352. (See *In re Marriage of Prietsch & Calhoun* (1987) 190 Cal.App.3d 645, 665 ["The court in a 'Richmond' order retains jurisdiction to modify both the amount and term for jurisdiction over spousal support conditioned upon the supported spouse, prior to the date set for termination of jurisdiction, . . . showing good cause why the order should be modified either as to amount or term of jurisdiction, or both"]; see also *Marriage of Berland* (1989) 215 Cal.App.3d 1257, 1261.)

This March 2009 order reduced spousal support to zero, relying in part on the noncompliance with the 2006 order that instructed Mother to take more action to become self-supporting to a greater degree. In effect, these orders served the same function as a "Richmond" order, by putting Mother on notice that she, as the supported spouse, had " 'a specified period of time to become self-supporting, after which the obligation of the supporting spouse will cease.' [Citation.]" (*Shaughnessy, supra*, 139 Cal.App.4th at p. 1247.) Mother cannot complain on procedural grounds that the trial court erroneously

held her to this statutory goal, to expect her to diligently continue to pursue more comprehensive employment opportunities. (§ 4320, subd. (I).)

C. Burden of Proof

Mother next contends the court did not properly allocate the burden of proof in this modification proceeding. She claims that Father, as the moving party, failed to show sufficient facts to establish any change of circumstances that would allow the previous orders to be modified. (*In re Marriage of Bardzik* (2008) 165 Cal.App.4th 1291, 1303, 1309 (*Bardzik*).) In *Bardzik*, the court enumerated different kinds of evidence that can be utilized to prove the reasonableness of imputing income to a supported spouse. Those include resumes, sample employment advertisements for persons with her credentials, or opinion testimony from a professional job counselor (or a vocational evaluation) about employment opportunities and potential income levels to be imputed.

Mother faults Father for failing to produce a new vocational evaluation for her, or other employment evidence, since the record contains only the 2004 evaluation. She cites to Evidence Code section 412, providing that weak evidence should be viewed with distrust, if the party offering it had the power to produce stronger evidence.

In reply, Father acknowledges that the burden of proof was initially on him to show changed circumstances, but he nevertheless claims that Mother had the greater knowledge about her financial circumstances, and therefore she could and should have produced more evidence to support her claim that the 2006 order was excessive, in imputing income to her of \$50,000 per year. (Evid. Code, § 500 [burden of proof on party seeking to establish supporting facts for a defense or claim].) Father points out that

the current order reduced the imputed amount of income from \$4,166 per month to \$3,000 per month. He argues that the family court therefore correctly exercised its discretion to acknowledge and account for the showing Mother made about her health problems and the problematic real estate market.

As astutely pointed out in *Bardzik, supra*, 165 Cal.App.4th at p. 1304: "The burden of proof as to ability and opportunity to earn imputed income (or lack thereof) plays out differently depending on the status quo going into the modification proceeding." The family court is allowed to engage in some hypothetical analysis in evaluating a parent's ability and opportunity to earn. (*Ibid.*) A parent must show that the other parent has the ability and opportunity to earn at a given level, but cannot be expected to make a clear showing that the parent to whom the income would be imputed would have succeeded in any particularized respect. (*Id.* at pp. 1304-1305.)

We think that Mother's failure to bring forward more evidence about her ability or inability to work, and at what level, was an implicit admission that the 2004 vocational evaluation continues to support findings of her earning power, at a professional level, of several thousands of dollars per month. Father's argument is well taken that Mother's conduct since 2006 has amounted to a failure to comply with the requirements of the 2006 order, and this supports his claim of changed circumstances. (*Shaughnessy, supra*, 139 Cal.App.4th at p. 1238.) The court did not abuse its discretion in finding that Father had demonstrated some changed circumstances with respect to his spousal support obligation, within the terms of the 2006 order, and we turn to the next portion of the analysis.

D. Sufficiency of Evidence Regarding Imputed Income

We examine the record to evaluate whether the family court had a sufficient basis in the evidence to impute to Mother the amount of \$3,000 per month in ability to earn, and in terminating spousal support. Father had the initial burden of proof to provide competent evidence to demonstrate that circumstances had changed since the 2006 order was made, with regard to spousal support obligations, as well as the child support based on that imputed income figure. (*Wittgrove, supra*, 120 Cal.App.4th at p. 1329.) This record is somewhat sparse as to the type of evidence suggested in *Bardzik, supra*, 165 Cal.App.4th at pages 1303, 1309, to prove the reasonableness of imputing income to a supported spouse (e.g., resumes, employment advertisements, or competent opinion testimony). Nevertheless, the 2006 orders previously imputed an ability to earn to her of over \$4,000 per month, and they were supported by the vocational evaluation. Neither party provided an updated evaluation. To the extent that Mother disagreed with the 2004 vocational report, she had the burden to controvert it. (Evid. Code, §§ 412, 500.)

In these proceedings, Mother represented that she began her real estate work in March 2007, and also began two other jobs in January 2008, loan mitigation and product sales, and claims she was working 50 hours a week as of February 2009, when the hearing was held. (We note that the 2006 order required her to provide evidence of job contacts, on request, until she found full-time employment, which she apparently did.) Mother agreed with Father that both parties had encountered changed circumstances since the 2006 orders were issued (apparently pointing to her own health concerns and Father's relocation). However, that was the extent of their agreement here.

In Mother's income and expense declaration, she claimed \$700 income for the month of January 2009, but she never showed that was a typical or average monthly salary. Instead, she left blank the column showing an average monthly income, and did not attach required profit and loss and income schedules. Mother made only a general showing that the real estate industry was undergoing significant local difficulties, different from the situation in 2004 or 2006, when the vocational evaluation was made and relied on in court. Mother reported assets of \$3,500, as well as real property valued at \$750,000.

Although Mother answered questions from the court by stating at the hearing that she made \$3,000 in net real estate commissions in 2008 (\$4,000 gross), she failed to explain why her income and expense declaration was not more complete in setting forth her overall earnings for the past few years, except for claiming she lost some tax returns. Although Mother made some showing, through two letters from doctors, that her health was becoming impaired and her need was growing, she did not claim actual inability to work. From her declaration stating she was working 50 hours a week, even on commission, the court could have reasonably made a finding, as it did, that she was attaining the ability to become self-supporting. We will presume that the evidence received sustains the findings of the court. (*In re Marriage of Ditto*, *supra*, 206 Cal.App.3d at pp. 647-649.)

The evidence also included Father's declaration that his assets amounted to about \$32,000, while his debt amounted to approximately \$475,000. Under section 4320,

subdivision (e), the respective obligations and assets of each party could properly factor into the court's spousal support ruling.

Moreover, the \$36,000 per year figure of income to be imputed to Mother represented a reduction from the 2006 orders, which were fully supported by the only available vocational evaluation. Mother did not controvert it nor supply any more accurate estimate of her monthly imputed income. (Evid. Code, §§ 412, 500.) Once Father showed changed circumstances over time, and shifted the burden to Mother to demonstrate why the court should not terminate spousal support, she was required to demonstrate why she had not gained the ability to support herself, within the directions of the 2006 order, but she failed to do so. The trial court made a reasonable assessment of the existing evidence and we cannot find any abuse of discretion in imputing \$3,000 monthly income to Mother, nor in terminating spousal support accordingly.

II

CHILD SUPPORT: TIMESHARE ISSUES

The trial court must exercise "an informed and considered discretion" with respect to child support obligations, and must not "ignore or contravene the purposes of the law regarding . . . child support. [Citations.]" (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 282-283; *County of Stanislaus v. Gibbs* (1997) 59 Cal.App.4th 1417, 1425.) Child support determinations appropriately set support obligations in light of an accurate determination of timeshare, as it affects the need of the supported party and the interests of the children.

The 2005-2006 orders set the status quo for Father at 27 percent timeshare. Although he was forced to relocate to Arizona for job reasons, he contends that he has kept up the same approximate timeshare through visitation and travel, without any assistance or cooperation from Mother. Father supplied financial data about his monthly expenses for family travel from October 2007 through February 2009. One of the children has turned 18 years of age, and Father appropriately arranges visitation as the children's schedules will allow.

In Mother's reply declaration, she generally estimated that simply because of his move to Arizona, Father was exercising only about a 10 percent timeshare. Her observations do not change the proven facts that Father was incurring significant expenses in attempting to adhere to the original timeshare orders. The family court could reasonably have concluded that Father should not be penalized for attempting to accommodate the children's schedules.

The moving and opposing papers filed in connection with Father's motion in this court for additional evidence to be taken on appeal, which we denied, disclose that there is a related OSC before the trial court, in which Mother seeks to modify the same 2006 support orders. We express no opinion on any outcome of future proceedings, and decide only that the rulings on review are adequately supported by the current record.

DISPOSITION

Affirmed. Costs on appeal to be borne by each party respectively.

HUFFMAN, Acting P. J.

WE CONCUR:

McINTYRE, J.

IRION, J.